

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Case No. _____

(to be filled in by the Clerk's Office)

Robert Otis Burke

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

"See Attached"

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

The Clerk will not file a civil complaint unless the person seeking relief pays the entire filing fee (currently \$350) and an administrative fee (currently \$50) in advance, or the person applies for and is granted in forma pauperis status pursuant to 28 U.S.C. § 1915. A prisoner who seeks to proceed in forma pauperis must submit to the Clerk (1) a completed affidavit of poverty and (2) a copy of the trust fund account statement for the prisoner for the six month period immediately preceding the filing of the complaint, obtained from and certified as correct by the appropriate official of each prison at which the prisoner is or was confined for the preceding six months. See 28 U.S.C. § 1915(a)(2).

If the Judge enters an order granting a prisoner's application to proceed in forma pauperis, then the order will assess the filing fee (currently \$350) against the prisoner and collect the fee by directing the agency having custody of the prisoner to deduct an initial partial filing fee equal to 20% of the greater of the average monthly deposits to the prison account or the average monthly balance in the prison account for the six-month period immediately preceding the filing of the complaint, as well as monthly installment payments equal to 20% of the preceding month's income credited to the account for each month that the balance of the account exceeds \$10.00, until the entire filing fee has been paid. See 28 U.S.C. § 1915(b). **A prisoner who is granted leave to proceed in forma pauperis is obligated to pay the entire filing fee regardless of the outcome of the proceeding, and is not entitled to the return of any payments made toward the fee.**

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Robert Otis Burke

All other names by which
you have been known:

ID Number

05-3219

Current Institution

LANCASTER COUNTY PRISON

Address

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Cheryl Steberger

Job or Title (*if known*)

Warden

Shield Number

Employer

LANCASTER COUNTY

Address

625 East King Street

Lancaster

PA

17602-3199

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 2

Name

Lou

Chirchello

Job or Title (*if known*)

Major

Shield Number

Employer

Address

625 East King Street

Lancaster

PA

17602-3199

City

State

Zip Code



Individual capacity



Official capacity

The Defendant(s)

Name William Aberts
Job or Title Deputy Warden
Shield Number
Employer
Address 625 East King Street Lancaster, PA 17602-3199
☒ Individual Capacity ☒ Official Capacity

Name Hackler
Job or Title Institutional Investigator
Shield Number
Employer
Address 625 East King Street Lancaster, PA 17602-3199
☒ Individual Capacity ☒ Official Capacity

Name E. Barr
Job or Title Corrections Officer / Prison Guard
Shield Number
Employer
Address 625 East King Street Lancaster, PA 17602-3199
☒ Individual Capacity ☒ Official Capacity

At all times, each defendant acted under color of state law.

Defendant No. 3

Name

Thomas Jenkins

Job or Title (if known)

Captain

Shield Number

Employer

Address

625 East King Street

Lancaster

PA

17602-3199

City

State

Zip Code

☐

Individual capacity

☒

Official capacity

Defendant No. 4

Name

Keith Mitchell

Job or Title (if known)

Correction Officer/Prison Guard

Shield Number

Employer

Address

625 East King Street

Lancaster

PA

17602-3199

City

State

Zip Code

☒

Individual capacity

☒

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐Federal officials (a *Bivens* claim)☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

The (5th) Fifth and (14th) Fourteenth Amendments, Due Process Clause

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Officer Mitchell, Keith used excessive force to punish me unreasonably

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

☒

Pretrial detainee

☐

Civilly committed detainee

☐

Immigration detainee

☐

Convicted and sentenced state prisoner

☐

Convicted and sentenced federal prisoner

☐

Other (*explain*)

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

On 3-1 Pod, Top tier, 05:21 PM, April 13, 2022.

On G-2/RHU Pod, Bottom tier, 12:15 AM, May 04, 2022.

Basis For Jurisdiction Section D.

Officer E. Barr used force that was objectively excessive. Warden - Cheryl Steberger acted with deliberate indifference as well Deputy Warden - William Aberts, Major - Lou Chirchello, Captain - Thomas Jenkins also acted with deliberate indifference in a subjective sense and disregarded excessive risks to my health and safety. They all refused to provide relief in the form of avoid contact, immediate release from RHU/the hole and/or Prison. They did not have the authority to provide relief in the form of monetary compensation. They all said my claims were not feasible or unfounded.

Investigator - Hackler never spoke with me nor assisted in filing report for assault and battery. He also sent blank response to my request. This is deliberate indifference as well.

At All Times, Each Defendant acted under color of state law.

C. What date and approximate time did the events giving rise to your claim(s) occur?

1st) April 13, 2022; 05:21 PM

2nd) May 04, 2022; 12:15 AM

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

1st) Officer Keith Mitchell punched me in the back of my head. Then put me in a choke hold ("full nelson") to the ground and kept choking me on camera in front of at least 48 people (other inmates). Then cuffed me. (handcuffs).

2nd) Officer E. Barr pushed me by the small of my back while wearing handcuffs behind my back until I fell. He then yanked the tether (mini leash) attached to the cuffs. He picked me up, then dropped me twice. Then he kicked me. All on camera.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

1st) My neck, back, right wrist and right ankle were injured. Also the back of my head had a lump. I received Tylenol and Ibuprofen. Then received X-rays for my back and neck.

2nd) My back, neck, ankle and wrists were injured further. My wrists were lacerated from cuffs when the tether was yanked. I've been taking 3,000 milligrams Tylenol, naproxen, baclofen and prilosec. Also muscle rub morning and night. No MRI Yet.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I want avoid contact / PFA lodged against my attackers. Release from prison.

Physical Therapy for physical injuries. Counseling for mental/emotional anguish with doctors of my choice. \$750,000.00 for irreversible damage. I didn't deserve any of this treatment. Also, I was diagnosed with acute anxiety and Post Traumatic Stress Disorder before this. My condition has gotten worse.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

LANCASTER COUNTY PRISON

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

LANCASTER COUNTY PRISON Grievance kiosk.

2. What did you claim in your grievance?

I was assaulted by both officers mentioned in the manners at different dates and times like aforementioned. I did nothing to warrant this treatment. I was punched and choked. Then handcuffed. I was pushed, yanked, felled and kicked.

3. What was the result, if any?

No Relief except nothing. My requests were denied.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

I appealed as far as possible until my grievances were deleted from my view on the kiosk and on the tablets provided to us here.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

E.D.Pa. AO Pro Se 14 (Rev. 04/18) Complaint for Violation of Civil Rights

☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

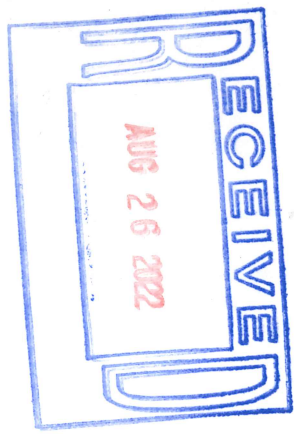
☐ Yes☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

INMATE: Robert Burke
PIN NUMBER: 053219

LANCASTER COUNTY PRISON
625 EAST KING STREET
LANCASTER, PA 17602



LEGAL MAIL

Clerk of Court, EDRa
James A. Byrne U.S. Courthouse
Room 2609
601 Market Street
Philadelphia, PA 19106

1910631756 0019

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